

CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 320

DANIEL O'DONNELL, PETITIONER,

vs.

GREAT LAKES DREDGE AND DOCK COMPANY

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT**

PETITION FOR CERTIORARI FILED AUGUST 20, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

DANIEL O'DONNELL, PETITIONER,

vs.

GREAT LAKES DREDGE AND DOCK COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[fol. 4]

**IN UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF ILLINOIS, EASTERN DIVISION**

No. 3172

Civil Action

DANIEL O'DONNELL, Plaintiff,

vs.

GREAT LAKES DREDGE AND DOCK COMPANY, a Corporation,
Defendant

(Action Under Special Rule for Seamen to Sue Without
Security and Pre-Payment of Fees)

COMPLAINT—Filed July 1, 1941

Plaintiff by his attorney, Earl J. Walker, complaining
of the defendant, respectfully alleges:

1. Upon information and belief that at all times hereinafter mentioned, the above named defendant was and now is a foreign corporation, organized and existing under and by virtue of the laws of the State of Delaware, with an office for the transaction of business in the city of Chicago and state of Illinois.

2. Upon information and belief that at all the times hereinafter mentioned, the above named defendant owned or leased a certain steamship known as the "Michigan."

3. Upon information and belief that at all the times hereinafter mentioned, the above named defendant operated said steamship.

[fol. 5] 4. Upon information and belief that at all the times hereinafter mentioned, the above named plaintiff, a citizen and resident of the state of Illinois, was in the employ of the defendant on board the steamship "Michigan" and for many months prior to August 8, 1940, had been a member of the crew and employed thereon as a seaman, at

the rate of wages of Nine- Five Dollars (\$95.00) per month, together with overtime and subsistence.

5. Plaintiff further avers on information and belief that on said day and prior thereto, that the said defendant was engaged in the performance of a certain contract with the Chicago Park District or other municipality, to transport sand from Indiana waters of Lake Michigan to navigable waters of said lake in Illinois, where said sand was unloaded by said defendant; and that the said plaintiff had at all times on and prior to said date been employed as a deckhand upon said vessel in the furtherance of said Interstate Commerce, and plaintiff's duties did directly or closely and substantially effect such commerce as hereinabove set forth; and plaintiff says that the said defendant, in the performance of its said contract and while engaged in said commerce, did, as part of the equipment of said boat, construct, own and maintain divers sluices and metal tubing located and used upon said vessel whereby said sand was sucked from the bottom of said lake into the hatches of said vessel, and later discharged therefrom through said tubing into certain other tubes or pipes upon the shore; and that said defendant had provided, used and maintained a certain gasket of great size and weight, for the purpose of connecting [fol. 6] ing said tubing used on said "Michigan" with the pipes upon the shore or piling adjacent or alongside said vessel.

6. Upon information and belief, plaintiff says it was the duty of the defendant to provide him with a safe and seaworthy vessel and appliances, and to keep the same in a safe condition; to furnish plaintiff with a safe place in which to work; to furnish him with reasonably safe and seaworthy tools and appliances and keep the same in a safe condition; to furnish plaintiff with a sufficient number of competent co-employees and superior officers; to promulgate and enforce proper and safe rules for the safe conduct of said work, and to perform the same in a reasonably safe manner so far as the plaintiff was concerned; and to warn the plaintiff of dangers arising and to be encountered therein. Plaintiff says that on the day aforesaid, to-wit, August 8, 1940, the plaintiff was engaged upon the deck of said vessel in his usual duties, and while employed on said vessel as aforesaid, the gasket attached to the said tubing on the side of said vessel became loose or disengaged

and permitted large quantities of said sand and water being unloaded from said vessel to escape; and thereupon said defendant, through its Master employed by it and in charge of the said vessel and said employees, did order and direct said plaintiff to proceed to a staging on the side of said vessel and with other employees to readjust and refasten said gasket; and by reason of the negligent failure of the defendant, its agents, servants and employees, and each of them, to perform the foregoing duties, and each of them, on or about said date, and at the place aforesaid, and while [fol. 7] the plaintiff was engaged in the course of his employment by said defendant and under the orders and directions of said Master, and while working for a few minutes only on a staging over the side of said vessel, a counter-weight or lever upon said gasket, of great weight, suddenly and without warning to said plaintiff, fell down to and upon said plaintiff and he thereby sustained severe and painful personal injuries.

7. Upon information and belief plaintiff says that said injuries were directly caused by the negligence of the defendant, its agents, servants and employees, in that they failed and neglected to supply the plaintiff with a safe place in which to work; while employed in furtherance of interstate commerce or in the work closely or substantially affecting such commerce, failed to supply plaintiff with a sufficient number of competent co-employees and superior officers supplied were negligent; that said defendant failed to properly instruct the plaintiff in the course of his duties, and failed to properly superintend and supervise the work going on at the time plaintiff was injured; and failed to promulgate and enforce proper and safe rules or methods for the safe conduct of said work, and to warn the plaintiff of the impending dangers.

8. Upon information and belief, plaintiff says that by effect and virtue of Section 33 of the Merchant Seaman's Act of June 5, 1920, amending Section 20 of the Seaman's Act of March 4, 1915, whereby all statutes heretofore enacted in favor of railroad employees engaged in foreign or Interstate Commerce, and particularly as amended August 11, 1939, commonly known as the Employers Liability Act, were made applicable to seamen employed on [fol. 8] vessels in navigable waters of the United States, the plaintiff is entitled to recover damages from the negli-

gence of the defendant and its co-employees, or said Master, in the defendant's services.

9. Plaintiff says that he was thereby rendered sick, sore, lame and disabled, and was confined to the house for a long time, has been and will for sometime to come be prevented from working at his usual business and employment, and has lost and will lose large sums of money which he otherwise would have earned; has suffered and will suffer great pain, and has incurred and will as he is informed and believes, have to pay out further sums for medical and surgical attentions and medicines; and he thereby suffered great pain in body and mind for a long period of time, to-wit, from thence hitherto, and has thereby lost divers wages which he might and otherwise would have received; and upon information and belief, that he has been permanently injured, all to his damage in the sum of Five Thousand Dollars (\$5,000.00).

10. Upon information and belief, plaintiff says that said injuries were not caused by any fault or want of care on the part of the plaintiff, but wholly and solely by reason of the dangerous, defective and unseaworthy condition of the vessel, and her appliances, and the negligence of the defendant, its agents, servants or employees.

11. Plaintiff says upon information and belief, that the said steamship "Michigan" was an American vessel, and the plaintiff had become and was on the day aforesaid and prior thereto, a member of the crew of said steamship in American waters.

[fol. 9]

II.

And for a second, separate or distinct cause of action, plaintiff further alleges:

12. Plaintiff repeats and realleges each and every allegation hereabove stated, with the same force and effect as if the same were herein again set forth in full.

13. Upon the plaintiff's becoming injured and ill as aforesaid, it was the duty of the defendant to provide the plaintiff with his maintenance during his period of disability.

14. That said defendant has failed, neglected and refused to pay him the expenses of his maintenance while in-

capacitated, and upon information and belief that plaintiff was and will be incapacitated for a long period of time, and that the said expense of his maintenance by reason of his said injuries received while employed as aforesaid, that he will be incapacitated for a long period of time; and that said expenses of his maintenance amount to the sum of Five Thousand Dollars (\$5,000.00), no part of which has been paid although duly demanded.

III

And for a third, separate or distinct cause of action, plaintiff alleges:

15. Plaintiff repeats and realleges each and every allegation hereinbefore stated, with the same force and effect as if the same were herein again set forth in full.

16. Upon the plaintiff's becoming injured and ill as aforesaid, it was the duty of the defendant to provide the plaintiff with proper and ordinary care, attention and treatment, and with proper and ordinary medical care, physicians and hospital treatment.

[fols. 10-11] 17. That the defendant, its agents, servants and employees, failed, neglected and refused to furnish the plaintiff with proper and ordinary care, attention and treatment, and with proper and ordinary medical care, physicians and hospital treatment; and in addition thereto was forced and compelled to work while he was sick, ill and unable to work, whereby his illness and injury was aggravated, and he was caused to sustain additional pain and suffering, all to his damage in the sum of Five Thousand Dollars (\$5,000.00).

Wherefore, plaintiff demands a judgment against the defendant in the sum of Fifteen Thousand Dollars (\$15,000.00), together with the costs and disbursements of this action.

Daniel O'Donnell, Plaintiff.

Earl J. Walker, 30 N. LaSalle—Randolph 6673, Attorney for Plaintiff.

Duly sworn to by Daniel O'Donnell. Jurat omitted in printing.

[fol. 12-14] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed July 30, 1941

Now comes the defendant, Great Lakes Dredge and Dock Company, a Corporation, by B. S. Quigley, its attorney, and moves the Court for an Order dismissing the above cause:

- (1) for want of jurisdiction of the subject matter; and
- (2) for failure to state a claim upon which relief can be granted.

B. S. Quigley, Attorney for Defendant.

[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

Statement of Evidence—Filed January 19, 1942

RECITAL RE MOTION TO DISMISS AND ORDER SUSTAINING MOTION AS TO COUNT I

Be it remembered that heretofore, to-wit, on September 24, 1941, said cause came on for hearing upon the written motion heretofore filed by the defendant to dismiss the above entitled cause: (1) for want of jurisdiction of the subject matter, and (2) for failure to state a claim upon which relief can be granted, and for cause thereof the said defendant contended as follows, viz.: That the complaint fails to state a claim upon which relief can be granted for it appears on the face of said complaint and the allegations therein contained that plaintiff's injuries occurred while he was off of the Steamship Michigan under orders of his superior officer to repair a gasket on a staging along [fol. 16] the side of the vessel when said accidental injuries were sustained; that the Seaman's Act of 1915 (Section 33 of the Merchant Marine Act of 1920, amending Section 20 of the Act of 1915) applies only to causes of action arising under the marine law where admiralty jurisdiction was formerly invoked but only in so far as the procedure and determination of liability is concerned; that the jurisdictional question as to the right of the seaman to bring the

action at all remains the same, that is, whether the injury occurred under circumstances raising admiralty jurisdiction and is to be decided by the law of maritime; that in order to invoke admiralty jurisdiction, such injury must have occurred on the vessel, and injuries off the vessel and on land do not come under the admiralty law, and that plaintiff's remedy, if any, lies under the Workmen's Compensation Act of the state of Illinois; that while the accidental injury of which plaintiff complains was sustained while he was not aboard the Michigan, it follows that the District Court of the United States does not have jurisdiction to entertain this case. Plaintiff cannot seek redress under the law of maritime for want of jurisdiction thereunder; that he cannot proceed herein as at common law be- [fols. 17-18] cause the state of Illinois has removed that right and substituted the Workmen's Compensation Act for his benefit, wherefore defendant respectfully submits that the within action ought to be dismissed for want of jurisdiction and that plaintiff ought to seek his remedy under the appropriate tribunal of the state of Illinois.

And thereupon said cause was argued by counsel for the respective parties; and thereafter, it was ordered by the court that said defendant's motion to dismiss said cause of action for want of jurisdiction be and said motion is sustained as to Count I, but was overruled as to Counts II and III of the complaint heretofore filed herein, to which action of the court in entering said order the said plaintiff duly objected.

[fols. 19-52] COLLOQUY BETWEEN COURT AND COUNSEL

The Clerk: O'Donnell vs. Great Lakes Dredge and Dock Company.

The Court: You may proceed.

Mr. D'Isa: If the Court please, before we proceed with the evidence, may I make this statement: There is no answer on file, so for the record may I have it shown that the only contest is to the nature and extent of the man's disability. We admit he is a seaman and he was injured, but we deny that he was injured to the extent which they claim.

(Witnesses duly sworn by the Clerk of the Court.)

The Court: Proceed.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

**PLAINTIFF'S PROPOSED FINDING OF FACT AND CONCLUSION
OF LAW—Submitted November 5, 1941**

The court finds that the evidence herein tends to prove that the respondent as owner of the Steamship Michigan was operating the same and was engaged in interstate commerce and upon navigable waters, and that part of the duties of Daniel O'Donnell, during his employment as a deckhand on said steamship and on the day of his injury herein, were, in furtherance of such commerce and directly or closely and substantially affected such commerce.

[fol. 54]

Conclusion of Law

The court holds as a matter of law that the evidence herein tends to prove a cause of action under Section 20 of the Merchant Marine Act (46 U. S. C. A., Section 688) and under the Employers Liability Act, as amended in 1939 (45 U. S. C. A., Sections 51 to 58 inclusive) incorporated by reference as a part of said Merchant Marine Act.

IN UNITED STATES DISTRICT COURT

[Title omitted]

**PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSION OF
LAW—Submitted November 5, 1941**

In this cause the libellant, Daniel O'Donnell, a seaman and member of the crew of the Steamship Michigan owned and operated by the respondent herein, Great Lakes Dredge and Dock Company, seeks to recover wages and maintenance from the respondent for injuries sustained by said libellant in the course of his employment and in the course of his duties as an employee as aforesaid. From the evidence herein, the court finds the following:

[fol. 55] 1. The respondent herein, the Great Lakes Dredge and Dock Company, a corporation, on August 8, 1940, and prior thereto, was the owner of the Steamship Michigan and was engaged in transporting cargoes of sand from Indiana

waters to Lincoln Park, in Illinois, over the waters of Lake Michigan, being navigable waters of the United States.

2. That respondent employed a crew of thirty-four seamen, including the libellant Daniel O'Donnell, who was a deckhand and member of the crew on said vessel under a contract for wages at Ninety Five Dollars (\$95.00) per month and in addition thereto his keep amounting to One Dollar and Forty Cents (\$1.40) per day.

3. That on August 8, 1940, the plaintiff was directed by his captain in command of said vessel to leave his usual duties and assist temporarily on shore in the repair of a gasket attached to said vessel, and while assisting in said repairs as directed by said captain, he was injured, due to the acts of other employees in removing certain wedges on the gasket, permitting a heavy portion thereof to fall upon him.

4. That plaintiff's physical injuries incapacitated him from labor as a seaman and other gainful employment for a period of ten months.

5. That by reason of his employment by respondent as aforesaid, and his injuries in respondent's service, the [fol. 56] libellant has sustained damages from loss of wages and keep during the period of his disability in the sum of Twelve Hundred Fifty Dollars (\$1,250.00).

Conclusion of Law

The court holds as a conclusion of law herein that the respondent is liable for damages sustained by Daniel O'Donnell as aforesaid.

Held:

— — —; Judge

IN UNITED STATES DISTRICT COURT

ORDER DENYING PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW—November 5, 1941

But the court denied said motion and refused to mark said findings of fact as "found" or said conclusions of law as "held," to which action of the court the plaintiff herein duly objected as to each of the same.

[fol. 57] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

**Findings of Fact and Conclusions of Law—December 1,
1941**

This cause coming on to be heard upon the libelant's libel, the answer of the respondent thereto, and the evidence heard, and the Court having heard the arguments of counsel and being fully advised in the premises, now makes the following

FINDINGS OF FACT

(1) The respondent herein, the Great Lakes Dredge and Dock Company, a corporation, on August 8, 1940, and prior thereto, was the owner of the Steamship Michigan and was engaged in transporting cargoes of sand from Indiana Waters to Lincoln Park, in Illinois, over the waters of Lake Michigan, being navigable waters of the United States.

(2) That respondent employed a crew of thirty-four seamen, including the libelant, Daniel O'Donnell, who was a deckhand and member of the crew on said vessel under a contract for wages at Ninety-Five Dollars (\$95.00) per month and in addition thereto his keep amounting to One Dollar and Forty Cents (\$1.40) per day.

(3) That on August 8, 1940, the plaintiff was directed by his captain in command of said vessel to leave his usual duties and assist temporarily on shore in the repair of a gasket attached to said vessel, and while assisting in said repairs as directed by said captain, he was injured, due to the acts of other employees in removing certain wedges on the gasket, permitting a heavy portion thereof to fall upon him.

[fol. 58] (4) The evidence is uncertain as to the exact period of total incapacity for gainful occupation.

(5) Libelant left the Marine Hospital of his own accord, without being discharged, and thereby refused further medical care afforded him, and that such action on his part prolonged his disability beyond that which was reasonable.

(6) The season of employment terminated in the month of November, 1940.

(7) There is no evidence of any expenditures upon which to base a recovery for care and maintenance.

Upon the above and foregoing findings of fact, the Court states the following

CONCLUSIONS OF LAW

- (1) The libelant cannot recover for care and maintenance;
- (2) The libelant is entitled to recover wages from the time of the injury until the expiration of the employment contract, a period of two and one-half months, in the sum of \$275.00.

Enter:

Charles E. Woodward, Judge.

Dated December 1, 1941.

[fol. 59] IN THE DISTRICT COURT OF THE UNITED STATES

No. 3172

DANIEL O'DONNELL

v.

GREAT LAKES DREDGE & DOCK COMPANY, a Corporation

DECREE—December 1, 1941

This cause having come on to be heard in its regular order on the 5th day of November, A. D. 1941, upon the pleadings and proofs, and having been argued and submitted by the advocates of the respective parties; and the Court after due deliberation having made its findings of fact and conclusions of law, in writing, heretofore filed herein and made a part hereof.

It is therefore ordered that said findings of fact and conclusions of law are hereby adopted as the court's findings of fact and conclusions of law pursuant to the Supreme Court's Admiralty Rule 46½; and it is further

Ordered, adjudged and decreed that the libelant, Daniel O'Donnell, recover of and from the respondent, Great Lakes

Dredge & Dock Company, herein, the sum of \$275.00, together with the libellant's costs to be taxed by the Clerk.

Enter:

Charles E. Woodward, Judge.

Dated December 1, 1941.

[fols. 60-62] And thereupon the plaintiff herein having duly objected to the 4th, 5th and 7th findings of fact and to the conclusions of law, it was ordered that said objections be and the same are hereby overruled.

And thereupon, it was ordered, adjudged and decreed that the said Daniel O'Donnell recover of and from the respondent Great Lakes Dredge and Dock Company, a corporation, the sum of Two Hundred Seventy Five Dollars (\$275.00), together with the libellant's costs to be taxed by the clerk of this court, to the entry of which order and decree herein the said Daniel O'Donnell by his counsel then and there duly objected.

[fols. 63-64] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER SUSTAINING MOTION TO DISMISS AS TO COUNT I AND
DENYING MOTION AS TO COUNTS 2 AND 3—September 24,
1941

It is ordered by the Court that motion of defendant to dismiss cause sustained for want of jurisdiction as to Count One and overruled as to Counts two and three.

[fols. 65-67] Findings of fact and conclusions of law omitted. Printed side page 57 ante.

[fols. 68-69] Decree omitted. Printed side page 58 ante.

[fols. 70-71] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF APPEAL—Filed December 23, 1941

Please take notice that Daniel O'Donnell, the plaintiff in the above entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Seventh Circuit, to be held in the court house of said court, in the city of Chicago, from the interlocutory order entered September 24, 1941, dismissing said cause as to the first count of the complaint herein, and from the final order and decree heretofore entered on December 1, 1941, and from each and every part of said decree.

Dated December 11, 1941.

Earl J. Walker, Attorney for Complainant, 30 North LaSalle Street, Randolph-6673, Chicago, Illinois.

To Hoyt King, Clerk. R. S. Quigley, 20 North Wacker Drive, Chicago, Illinois.

Received copy of the above and foregoing Notice of Appeal and copy of Petition, this 11th day of December, A. D. 1941.

B. S. Quigley, Attorney for Defendant.

[fol. 72] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

**APPELLANT'S STATEMENT OF POINTS AND PREJUDICIAL ERRORS
APPEARING IN THE RECORD OF THE DISTRICT COURT—Filed
January 17, 1942**

Now comes the appellant and says there was manifest error in the record and proceedings herein, and for cause thereof shows the following several matters:

1. The District Court erred in sustaining the written motion of the defendant to dismiss the suit herein as to the first count of the complaint.
2. The District Court erred in holding that plaintiff could not recover under the first count of the complaint

and under the statutes of the United States therein referred to.

3. The District Court erred in refusing to find the several facts and each of them as requested by the plaintiff, in writing, on the trial.

[fols. 73-74] 4. The District Court erred in failing to hold as the law, the respective conclusions of law and each of them, submitted by plaintiff to the court, in writing, upon the trial.

5. The trial court erred in making the fourth, fifth, sixth and seventh findings of fact, and each of them.

6. The court erred in holding the first and second conclusions of law and each of them.

7. The court erred in failing to find under the evidence that the plaintiff was entitled to maintenance for a period of ten (10) months under the second count of the complaint and include as part thereof the item of One Dollar and Forty Cents (\$1.40) per day for his subsistence as well as wages.

8. The findings of the court are contrary to the evidence.

9. The District Court erred in entering judgment upon the erroneous findings of fact and conclusions of law.

10. The finding and judgment of the court is inadequate and insufficient under the evidence.

11. The court erred as to the law applicable to the facts under the evidence herein.

Daniel O'Donnell, Appellant, by Earl J. Walker,
Attorney for Appellant.

[fols. 75-79] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—December 22, 1941

Upon reading the petition of Daniel O'Donnell for leave to appeal herein without bond or other security for costs, and it appearing that said plaintiff is a seaman,

It is ordered that an appeal herein by said Daniel O'Donnell to the United States Circuit Court of Appeals of the Seventh Circuit is allowed as prayed for; and that no bond or security for costs on appeal be required of said appellant.

Enter:

Charles E. Woodward, Judge.

Entered December 22, 1941.

[fol. 80] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 81-85] [Caption omitted]

[fols. 86-89] IN UNITED STATES CIRCUIT COURT OF APPEALS

Before Hon. Otto Kerner, Circuit Judge

7929

DANIEL O'DONNELL, Plaintiff-Appellant,

vs.

GREAT LAKES DREDGE AND DOCK COMPANY, a Corporation,
Defendant-Appellee

Appeal from the District Court of the United States for
the Northern District of Illinois, Eastern Division

ORDER ALLOWING APPELLANT TO PROCEED WITHOUT PREPAY-
MENT OF COSTS—January 31, 1942

On motion of counsel for appellant, and on consideration of the affidavit of said counsel showing that appellant is a seaman, it is ordered, pursuant to 28 U. S. C. A. 837 and 287 U. S. 278, that appellant may prosecute this appeal without prepayment of Court costs.

It is further ordered that the transcript of the record in this cause may be not printed, that counsel for appellant and for appellee may withdraw the original certified transcript of record for use in the preparation of their briefs, and that four typewritten copies of appellant's brief, together with proof of service of same upon opposing counsel, may be filed in lieu of the printed copies required by the rules of this Court.

[fol 90] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1941—APRIL
SESSION, 1942

No. 7929

DANIEL O'DONNELL, Plaintiff-Appellant,

vs.

GREAT LAKES DREDGE AND DOCK COMPANY, a Corporation,
Defendant-Appellee

Appeal from the District Court of the United States for
the Northern District of Illinois, Eastern Division

OPINION—May 22, 1942

Before Sparks and Kerner, Circuit Judges, and Campbell,
District Judge

KERNER, Circuit Judge:

Appellant was employed as a deckhand upon the steamship "Michigan," owned and operated by the defendant. He sued for damages for injuries occasioned by the negligence of the defendant and in admiralty for maintenance during his disability. The District Court dismissed the suit as to the negligence count and entered a judgment upon the admiralty count in favor of the libelant for \$275. To reverse the judgment, appellant appeals.

The defendant was engaged in transporting sand from Indiana to Illinois over the navigable waters of Lake Michigan. The sand was unloaded from the hatches of the vessel through a conduit swung over the side and permanently attached to the vessel, the outer end, being connected to land pipes by means of a gasket. On August 8, 1940, after the gasket became detached, appellant was ordered by the master of the vessel to assist on shore in its repair, and while so engaged, a counter-weight fell upon his leg and pinned it to the floor.

[fol. 91] The errors complained of are in the dismissal of the first count and in making an insufficient award for maintenance.

Section 33 of the Merchant Marine Act of 1920, 46 U. S. C. A. § 688, generally known as the Jones Act, provides

that any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and that in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply.

Appellant earnestly contends that the Jones Act applies the Employers' Liability Act¹ to all injuries incurred by a seaman "in the course of his employment" either on navigable waters or on land, if any part of his duties are in "furtherance of interstate commerce" or "directly or closely and substantially affect such commerce" or if the injury is within the admiralty jurisdiction.

It is interesting to note that the appellant concedes that there are decisions to the effect that admiralty jurisdiction applies only to navigable waters. These, however, he criticizes as unsound, and he argues that the term "seaman," as used in the Jones Act, ought not to be construed to apply to those performing duties only on the vessel. Rather, it should be construed to apply to any seaman who suffers a personal injury in the course of his employment, irrespective of the place of injury.

The criticism heaped upon the decisions is, that if the seaman engaged in duty on a vessel is entitled to recover under the Jones Act, but is denied recovery if, under orders of the master of the vessel, he performs similar duties on shore and is injured, there is read into the statute language that is not there. Unfortunately, we are not free to agree with this contention.

Crowell v. Benson, 285 U. S. 22, did not involve the Jones Act, but it arose under the provisions of the Longshoremen's and Harbor Workers' Compensation Act,² and in discussing the authority of Congress concerning the grant of power in cases of admiralty and maritime jurisdiction, Mr. Chief Justice Hughes said (p. 55): "In amending and [fol. 92] revising the maritime law, the Congress cannot reach beyond the constitutional limits which are inherent in the admiralty and maritime jurisdiction. Unless the injuries to which the Act relates occur upon the navigable

¹ 45 U. S. C. A. §§ 51-59.

² Act of March 4, 1927, 33 U. S. C. A. §§ 901-950.

waters of the United States, they fall outside that jurisdiction." (p. 56): "• • • if the injury did not occur upon the navigable waters of the United States, there is no ground for an assertion that the person against whom the proceeding was directed could constitutionally be subjected, in the absence of fault upon his part, to the liability which the statute creates."

In *Panama R. R. Co. v. Johnson*, 264 U. S. 375, the court, in discussing the Jones Act, said (p. 388): "Rightly understood the statute neither withdraws injuries to seamen from the reach and operation of the maritime law, nor enables the seaman to do so. On the contrary, it brings into that law new rules drawn from another system and extends to injured seamen a right to invoke, at their election, either the relief accorded by the old rules or that provided by the new rules. The election is between alternatives accorded by the maritime law as modified, and not between that law and some nonmaritime system."

In *Soper v. Hammond Lumber Company*, 4 F. (2) 872, the plaintiff was employed as a seaman on a ship engaged in interstate commerce, and was injured while on shore unloading the vessel. There, as here, he contended he was entitled to proceed in admiralty under the provisions of the Employers Liability Act. The court held to the contrary. In *O'Brien v. Calmar etc.*, 104 F. (2) 148, the seaman was injured on a pier while adjusting a gang plank to connect with the defendant's vessel lying at the pier. The court held that the Act has been construed not to extend beyond admiralty jurisdiction, and not to apply to injuries on land. See also *Todahl v. Sudden & Christenson*, 5 F. (2) 462; *Esteres v. Lykes Bros. etc.*, 74 F. (2) 364; and *Jeffers v. Foundation Co.*, 85 F. (2) 24. These cases impel us to the conclusion that the decision of the District Court dismissing the first count of the complaint was correct.

This brings us to the contention that the court made an inadequate award.

The record discloses that immediately after the injury, the injured seaman was removed to a hospital and there treated until August 27, 1940, when he was discharged at [fol. 93] his own request and taken to his home. The court found as a fact that the appellant had been engaged in seasonal work under a contract for wages at \$95 per month and his board and lodging valued at \$1.40 per day and that the

season began in March and ended in November, and concluded that the appellant was not entitled to maintenance, but awarded to appellant a sum equal to the amount he would have earned under the unexpired term of his contract at the rate of \$95 per month. The argument is that appellant should recover, in addition to his wages, his maintenance at the rate of \$1.40 per day.

Unquestionably, the owner of a vessel is liable to a seaman injured in the service of his ship, for wages and keep during the employment, *Calmar etc. v. Taylor*, 303 U. S. 525; *Smith v. Lykes etc.*, 105 F. (2) 604, comparable to that to which the seaman is entitled while at sea, *The Henry B. Fiske*, 141 F. 188; *The Mars*, 145 F. 446; 149 F. 729, and his right to maintenance may extend beyond the term of service, *Calmar case, supra*, 529.

Under the circumstances here appearing, we are of the opinion that appellant was entitled to recover his wages at the rate of \$95 per month, including his maintenance at the rate of \$1.40 per day. Accordingly, the judgment is reversed, and the cause is remanded to the District Court with directions to enter a judgment for appellant for such sum as may be proved to be due upon the principles here determined.

Teste: _____

[fol. 94] IN UNITED STATES CIRCUIT COURT OF APPEALS

7929

DANIEL O'DONNELL, Plaintiff-Appellant,

vs.

GREAT LAKES DREDGE AND DOCK COMPANY, Defendant-Appellee

JUDGMENT—May 22, 1942

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, re-

versed, and that this cause be, and the same is hereby, remanded to the District Court with directions to enter a judgment for appellant for such sum as may be due upon the principles determined by the opinion of this Court filed this day.

It is further ordered that in the event that a money judgment is recovered by the plaintiff against the defendant in this cause, then the costs of the plaintiff in this Court, amounting to \$36.65, the prepayment of which was waived pursuant to the provisions of the Statutes of the United States (28 U. S. C. A. Section 837) and order entered on January 31, 1942, shall be taxed on the docket and said amount shall be paid by defendant to the Clerk of the U. S. District Court and transmitted by the Clerk of the District Court to the Clerk of this Court, who shall then account for same in his report of earnings.

[fol. 95] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER PERMITTING WITHDRAWAL OF ORIGINAL RECORD—July
24, 1942

On application of counsel for appellant, it is ordered that the certified transcript of record of proceedings in the District Court of the United States for the Northern District of Illinois, Eastern Division, filed in this Court on January 31, 1942, be transmitted by the Clerk of this Court to the Supreme Court of the United States for use in connections with appellant's petition for writ of certiorari in that Court.

[fol. 96] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 97] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1942

[Title omitted]

STIPULATION OF PORTIONS OF RECORD NOT TO BE PRINTED—
Filed August 1, 1942

The parties to this cause, through their respective attorneys, hereby stipulate to omit from the printed record all matter designated below:

- In the District Court of the United States.
- Page 3 —Statement of filing of complaint.
 - Page 11 —Statement of filing of motion by defendant.
 - Page 13 —Statement of filing of transcript of testimony.
 - Pages 18-52—Omit all except statement by Mr. D'Isa on page 19.
 - Page 62 —Statement regarding entry of court order.
 - Page 64 —Statement regarding entry of findings of fact and conclusions of law.
 - [fol. 98] Page 67—Statement regarding entry of decree.
 - Page 69 —Statement regarding filing of notice of appeal.
 - Page 71 —Statement regarding filing of statement of points.
 - Page 74 —Statement regarding entry of order.
 - Pages 76-79—Certificate as to name of appellee and attorney and designation of record.

In the Circuit Court of Appeals:

Omit all except orders and opinion of the Court. This omits the first five pages and the 7th, 8th and 9th pages.

Walter F. Dodd, Attorneys for Petitioner. B. S. Quigley, Ezra L. D'Isa, Attorneys for Respondent.

July 29, 1942.

[fol. 99] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1942

No. 320

ORDER ALLOWING CERTIORARI—Filed October 12, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3479)